

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

ERIKA HERRERA,

Plaintiff,

-against-

HILLSIDE AUTO MALL INC., dba HILLSIDE  
AUTO OUTLET, LIBERTY AUTOLAND INC.,  
and CAPITAL ONE AUTO FINANCE, INC. a  
division of CAPITAL ONE, N.A.,

Defendants.

**No. 1:21-cv-4943-FB-TAM**

**Jury Trial Demanded**

**CAPITAL ONE’S ANSWER WITH AFFIRMATIVE DEFENSES TO COMPLAINT**

Defendant Capital One, N.A. d/b/a Capital One Auto Finance (“Capital One” or “Defendant”), improperly named in the Complaint in the above-captioned action as “Capital One Auto Finance, Inc. a division of Capital One, N.A.”<sup>1</sup> by and through its undersigned attorneys, Mestechkin Law Group P.C., hereby answers the Summons and Complaint of Plaintiff Erika Herrera, dated on June 15, 2021, as follows:

**Nature of This Action**

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first three sentences of Paragraph 1 of the Complaint and therefore denies them. Defendant denies the allegations in the fourth sentence of Paragraph 1 of the Complaint to the extent applicable to Capital One. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence of Paragraph 1 of the Complaint to the extent applicable to Dealership Defendants. Defendant denies the allegations in the fifth sentence of Paragraph 1 of the Complaint.

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<sup>1</sup> Capital One Auto Finance, Inc. is not an actual entity. Rather, Capital One Auto Finance is a “doing business as” moniker for defendant Capital One, N.A.

2. Defendant admits that Paragraph 2 of the Complaint purports to allege claims for breach of express and implied warranties, violations of the Magnuson-Moss Warranty Act, New York General Business Law §§ 349 & 350, and common law claims of fraud, but denies that the Complaint states any causes of action thereunder.

**Parties**

3. Plaintiff's allegations regarding her domicile call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and therefore, denies the same.

4. The allegations in Paragraph 4 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint, and therefore, denies the same.

5. The allegations in Paragraph 5 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint, and therefore, denies the same.

6. Defendant denies the allegations of Paragraph 6 of the Complaint as drafted. Capital One Auto Finance is a division of Capital One, N.A. Capital One, N.A. is a national association.

7. Defendant admits the allegations of Paragraph 7 of the Complaint.

8. Defendant admits the allegations of Paragraph 8 of the Complaint that Capital One is assignee of Plaintiff's contracts with Dealer Defendants, but denies the remaining allegations of this Paragraph.

**Facts**

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint and therefore denies them.

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint and therefore denies them.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint and therefore denies them.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint and therefore denies them.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint and therefore denies them.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint and therefore denies them.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint and therefore denies them.

16. The allegations in Paragraph 16 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint, and therefore, denies the same.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint and therefore denies them.

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint and therefore denies them.

19. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations of Paragraph 19 of the Complaint and therefore denies them.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint and therefore denies them.

21. The allegations in Paragraph 21 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint, and therefore, denies the same.

22. The allegations in Paragraph 22 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, and therefore, denies the same.

23. The allegations in Paragraph 23 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint, and therefore, denies the same.

24. The allegations in Paragraph 24 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent any response is required, Capital One lacks information and knowledge sufficient to form a belief as to the truth of the allegations, and therefore, denies the same. By way of further response, the allegations in Paragraph 24 of the Complaint refer to documents which speak for themselves. To the extent the allegations differ from the documents, they are denied.

25. Defendant denies the allegations in Paragraph 25 of the Complaint.

26. The allegations in Paragraph 26 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One

lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint, and therefore, denies the same.

27. Defendant denies the allegations in Paragraph 27 of the Complaint.

28. The allegations in Paragraph 28 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

29. The allegations in Paragraph 29 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

30. The allegations in Paragraph 30 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint, and therefore, denies the same.

31. The allegations in Paragraph 31 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint, and therefore, denies the same.

32. The allegations in Paragraph 32 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations

contained in Paragraph 32 of the Complaint, and therefore, denies the same.

33. The allegations in 33 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent any response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

34. The allegations in Paragraph 34 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 34 call for legal conclusions to which no response is required. To the extent a response is required, Capital One denies the allegations in Paragraph 34 of the Complaint.

35. The allegations in Paragraph 35 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 35 call for legal conclusions to which no response is required. To the extent a response is required, Capital One denies the allegations in Paragraph 35 of the Complaint.

36. Defendant denies the allegations in Paragraph 36 of the Complaint.

37. Defendant denies the allegations in Paragraph 37 of the Complaint.

**First Cause of Action NY UCC §2-313**  
**(Breach of Express Warranty)**

38. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

39. The allegations in Paragraph 39 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 39 call for legal conclusions to which no response is required. To the extent a response is required, Capital One denies the allegations in Paragraph 39 of the Complaint.

40. The allegations in Paragraph 40 of the Complaint are not directed towards Capital

One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 40 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint, and therefore, denies the same.

41. The allegations in Paragraph 41 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 41 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint, and therefore, denies the same. By way of further response, the allegations in Paragraph 41 of the Complaint refer to documents which speak for themselves. To the extent the allegations differ from the documents, they are denied.

42. The allegations in Paragraph 42 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint, and therefore, denies the same. By way of further response, the allegations in Paragraph 42 of the Complaint refer to documents which speak for themselves. To the extent the allegations differ from the documents, they are denied.

43. The allegations in Paragraph 43 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint, and therefore, denies the same. By way of further response, the allegations in Paragraph 43 of the Complaint refer to documents which speak for themselves. To

the extent the allegations differ from the documents, they are denied.

44. The allegations in Paragraph 44 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 44 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint, and therefore, denies the same.

45. The allegations in Paragraph 45 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 45 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint, and therefore, denies the same. By way of further response, the allegations in Paragraph 45 of the Complaint refer to documents which speak for themselves. To the extent the allegations differ from the documents, they are denied.

46. The allegations in Paragraph 46 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 46 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint, and therefore, denies the same.

47. The allegations in Paragraph 47 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 47 call for legal conclusions to which no response is required. To the



extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Complaint, and therefore, denies the same. By way of further response, the allegations in Paragraph 47 of the Complaint refer to documents which speak for themselves. To the extent the allegations differ from the documents, they are denied.

48. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint, and therefore denies them.

49. The allegations in Paragraph 49 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 49 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint, and therefore, denies the same. By way of further response, the allegations in Paragraph 49 of the Complaint refer to documents which speak for themselves. To the extent the allegations differ from the documents, they are denied.

50. The allegations in Paragraph 50 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 50 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

51. The allegations in Paragraph 51 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the

allegations in Paragraph 51 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Second Cause of Action NY UCC §2-314**  
**(Implied Warranty of Merchantability)**

52. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

53. The allegations in Paragraph 53 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 53 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint, and therefore, denies the same.

54. The allegations in Paragraph 54 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint, and therefore, denies the same.

55. The allegations in Paragraph 55 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 55 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint, and therefore, denies the same.

56. The allegations in Paragraph 56 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 56 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint, and therefore, denies the same.

57. The allegations in Paragraph 57 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 57 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint, and therefore, denies the same

58. The allegations in Paragraph 58 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 58 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint, and therefore, denies the same.

59. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint, and therefore, denies the same.

60. The allegations in Paragraph 60 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint, and therefore, denies the same.

61. The allegations in Paragraph 61 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 61 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

62. The allegations in Paragraph 62 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 62 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Third Cause of Action NY Vehicle and Traffic Law §417**

63. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

64. The allegations in Paragraph 64 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 64 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of the Complaint, and therefore, denies the same.

65. Paragraph 65 of the Complaint purports to set forth a legal standard as to which no

response is required. To the extent a response is required, the allegations in this Paragraph are denied.

66. Paragraph 66 of the Complaint purports to set forth a legal standard as to which no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

67. Paragraph 67 of the Complaint purports to set forth a legal standard as to which no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

68. The allegations in Paragraph 68 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 68 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint, and therefore, denies the same.

69. The allegations in Paragraph 69 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 69 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint, and therefore, denies the same.

70. The allegations in Paragraph 70 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 70 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a

belief as to the truth of the allegations contained in Paragraph 70 of the Complaint, and therefore, denies the same.

71. The allegations in Paragraph 71 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 71 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

72. The allegations in Paragraph 72 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 72 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Forth Cause of Action Magnusson Moss Warranty Act**  
**(15 U.S.C. §§ 2301, et seq.)**

73. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

74. The allegations in Paragraph 74 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 74 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint, and therefore,

denies the same.

75. The allegations in Paragraph 75 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 75 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 of the Complaint, and therefore, denies the same.

76. The allegations in Paragraph 76 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 76 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint, and therefore, denies the same.

77. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 77 of the Complaint and therefore denies them.

78. The allegations in Paragraph 78 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 78 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint, and therefore, denies the same.

79. The allegations in Paragraph 79 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 79 call for legal conclusions to which no response is required. To the

extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint, and therefore, denies the same.

80. The allegations in Paragraph 80 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 80 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Fifth Cause of Action Deceptive Trade Practices**  
**(N.Y. Gen. Bus. Law §350 – Against the Dealer Defendants)**

81. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

82. Paragraph 82 of the Complaint purports to set forth a legal standard as to which no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

83. The allegations in Paragraph 83 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 83 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint, and therefore, denies the same.

84. The allegations in Paragraph 84 of the Complaint are not directed towards Capital



One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 84 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint, and therefore, denies the same.

85. The allegations in Paragraph 85 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 85 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint, and therefore, denies the same.

86. The allegations in Paragraph 86 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 86 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint, and therefore, denies the same.

87. The allegations in Paragraph 87 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 87 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Sixth Cause of Action Deceptive Acts and Practices**  
**(N.Y. Gen. Bus. Law §349 – Against the Dealer Defendants)**

88. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

89. The allegations in Paragraph 89 of the Complaint call for legal conclusions to which no response is required. To the extent a response is required, Capital One denies the allegations in Paragraph 89 of the Complaint. By way of further response, Capital One denies it violated the NYGBL§349 in any way.

90. The allegations in Paragraph 90 of the Complaint call for legal conclusions to which no response is required. To the extent a response is required, Capital One denies the allegations in Paragraph 90 of the Complaint.

91. Defendant denies the allegations in Paragraph 91 of the Complaint.

92. The allegations in Paragraph 92 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 92 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 of the Complaint, and therefore, denies the same.

93. Defendant denies the allegations in Paragraph 93 of the Complaint. By way of further response, Capital One denies it violated the NYGBL§349 in any way.

94. The allegations in Paragraph 94 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 94 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a

belief as to the truth of the allegations contained in Paragraph 94 of the Complaint, and therefore, denies the same.

95. Defendant denies the allegations in Paragraph 95 of the Complaint. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Seventh Cause of Action Common Law Fraud**  
**(Against the Dealer Defendants)**

96. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

97. The allegations in Paragraph 97 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 97 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of the Complaint, and therefore, denies the same.

98. The allegations in Paragraph 98 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 98 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint, and therefore, denies the same.

99. The allegations in Paragraph 99 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 99 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a

belief as to the truth of the allegations contained in Paragraph 99 of the Complaint, and therefore, denies the same.

100. The allegations in Paragraph 100 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 100 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint, and therefore, denies the same.

101. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint, and therefore, denies the same. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

102. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 102 of the Complaint, and therefore denies the same.

103. The allegations in Paragraph 103 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 103 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint, and therefore, denies the same.

**Eighth Cause of Action**  
**(Breach of Warranty of Title)**

104. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

105. Paragraph 105 of the Complaint purports to set forth a legal standard as to which

no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

106. The allegations in Paragraph 106 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 106 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint, and therefore, denies the same.

107. The allegations in Paragraph 107 of the Complaint are not directed towards Capital One and therefore no response is required. To the extent that any response is required, the allegations in Paragraph 107 call for legal conclusions to which no response is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint, and therefore, denies the same.

108. Defendant denies the allegations in Paragraph 108 of the Complaint. By way of further response, Capital One denies that it is liable to Plaintiff in any way.

**Prayer for Relief**

Defendant denies that Plaintiff is entitled to any relief whatsoever that she seeks in her prayer for relief such that Defendant prays that Plaintiff's Complaint be dismissed with prejudice, or alternatively, that a judgment of no cause for action be entered in favor of Defendant and against Plaintiff, with costs and attorney fees to be awarded to Defendant as allowed by law.

**DEFENDANT'S AFFIRMATIVE DEFENSES**  
**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

109. That the Verified Complaint asserts claims against improper parties, where there is

no basis in law or in fact for these entities to be party to this action.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

110. That the Verified Complaint herein fails to state a cause of action upon which relief may be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

111. That Defendant did not owe the Plaintiff any of the duties alleged in the Verified Complaint.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

112. Upon information and belief, that whatever damages the Plaintiff may have sustained at the time and place mentioned in the Verified Complaint, these damages were caused in whole or in part by the culpable conduct of the said Plaintiff. The amount of damages recovered, if any, shall therefore be diminished in the proportion to which said culpable conduct, attributable to Plaintiff, bears to the culpable conduct which caused said injuries.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

113. To the extent Plaintiff has suffered any damages, which Defendant expressly denies, Plaintiff has failed to take any steps to mitigate her damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

114. Plaintiff's claims are barred by the doctrines of accord and satisfaction, election, failure of a condition precedent, novation, and mistake.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

115. Plaintiff's claims are barred by Plaintiff's failure of performance.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

116. Plaintiff's claims are barred by the doctrine of unclean hands.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

117. Plaintiff's claims are barred by the doctrine of laches.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

118. Plaintiff's claims are barred by the statute of limitations.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

119. Plaintiff's punitive damages claims are barred because Defendant did not act with malice or with reckless indifference and made good faith efforts to comply with all applicable laws.

**WHEREFORE**, Defendant respectfully requests that the Court enter judgment as follows:

- (a) Dismissing Plaintiff's complaint;
- (b) Granting Defendant its reasonable costs and attorneys' fees; and
- (c) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
January 20, 2022

/s/ Oleg Mestechkin  
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*Attorneys for Defendant Capital One*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2022 I served the foregoing document via electronic filing with the Clerk of the Court using the CM/ECF filing system.

/s/ Nancy Lam

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